Uniformed Services Employment & Reemployment Rights Act (USERRA)

SGT Jennifer Campbell

Employee Relations Specialist

Purpose & Scope

- As a member of the Armed Forces Reserve Component, one should have a basic understanding of:
  - What is USERRA
  - How it works &
  - Its benefits
- Supervisors must have a basic understanding so that they can help their employees understand their rights and responsibilities.

Agenda

- Introduction
- Eligibilities
- Entitlements
- Protections
- Reemployment Rights
- Procedures
- Additional Information
- Review & Wrap-up

SEE HANDOUT 1

YOUR RIGHTS UNDER USERRA
THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service or certain types of service in the National Disaster Medical System. USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services.

REEMPLOYMENT RIGHTS

You have the right to be reemployed in your civilian job if you leave that job to perform service in the uniformed service and:

- ☆ you ensure that your employer receives advance written or verbal notice of your service;
- ☆ you have five years or less of cumulative service in the uniformed services while with that particular employer;
- ☆ you return to work or apply for reemployment in a timely manner after conclusion of service; and
- ☆ you have not been separated from service with a disqualifying discharge or under other than honorable conditions.

If you are eligible to be reemployed, you must be restored to the job and benefits you would have attained if you had not been absent due to military service or, in some cases, a comparable job.

RIGHT TO BE FREE FROM DISCRIMINATION AND RETALIATION

If you:

- ☆ are a past or present member of the uniformed service;
- ☆ have applied for membership in the uniformed service; or
- ☆ are obligated to serve in the uniformed service;

then an employer may not deny you:

- ☆ initial employment;
- ☆ reemployment;

HEALTH INSURANCE PROTECTION

- ☆ If you leave your job to perform military service, you have the right to elect to continue your existing employer-based health plan coverage for you and your dependents for up to 24 months while in the military.
- ☆ Even if you don't elect to continue coverage during your military service, you have the right to be reinstated in your employer's health plan when you are reemployed, generally without any waiting periods or exclusions (e.g., pre-existing condition exclusions) except for service-connected illnesses or injuries.

ENFORCEMENT

- ☆ The U.S. Department of Labor, Veterans Employment and Training Service (VETS) is authorized to investigate and resolve complaints of USERRA violations.
- ☆ For assistance in filing a complaint, or for any other information on USERRA, contact VETS at **1-866-4-USA-DOL** or visit its **website at http://www.dol.gov/vets**. An interactive online USERRA Advisor can be viewed at **http://www.dol.gov/elaws/userra.htm**.
- ☆ If you file a complaint with VETS and VETS is unable to resolve it, you may request that your case be referred to the Department of Justice or the Office of Special Counsel, as applicable, for representation.

Introduction to USERRA

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) is the Federal law that establishes rights and responsibilities for members of the National Guard and Reserve, and their civilian employers. USERRA affects employment, reemployment, and retention in employment, when employees serve or have served in the uniformed services. Congress provided the statutory authority for investigating alleged violations of USERRA to the U.S. Department of Labor (DoL). If DoL finds that an employer has likely violated USERRA, DoL may refer the case to the U.S. Department of Justice for legal action against the employer.

Introduction to USERRA

- Title 38, Section 4303 (16) of the United States Code defines Uniformed Services as Army & Air National Guard members engaged in active/inactive duty for training, full-time NG duty; and any services designated by the President in time of war or emergency.

Categories of Eligibilities

- Active duty (contingency).
- Active duty for training (AT's, schools).
- Initial active duty for training (Basic).
- Inactive duty training (Drills).
- Full-time National Guard duty (AGR, ADOS).
- Military Fit-For-Duty examinations.
- Funeral honors - Details performed by National Guard or reserve members- Honor Guard Details.

Entitlements

- Any Federal employee who performs duty with a uniformed service, **whether voluntary or involuntary**, is entitled to be restored to the position (or like thereof) he or she would have attained had the technician not entered the uniformed service, provided the technician:

Entitlements… continued

1. Gave the agency advance notice of departure except where prevented by military circumstances; and

2. Was released from uniformed service under honorable conditions; and

3. Applies for restoration within the appropriate time limits

4. Served no more than a **cumulative total of 5 years**

Entitlements…continued

- For non-contingency operations
  - (i.e. AGR or ADOS)
  - A maximum of five year restoration rights apply beginning from the date of military service
- For contingency operations
  - (i.e. Operation Enduring Freedom, Iraqi Freedom, Noble Eagle)
  - Five year restoration rights do not apply

SEE HANDOUT 2

USERRA QUESTIONS continued

(24) ARE THERE ANY EXCEPTIONS TO USERRA'S FIVE-YEAR SERVICE LIMIT?

USERRA creates the following exceptions to the five-year limit on service in the uniformed services:

- Service that is required beyond five years to complete an initial period of obligated service. Some military specialties require an individual to serve more than five years because of the amount of time or expense involved in training. If the employee works in one of those specialties, he or she has reemployment rights when the initial period of obligated service is completed.
- If the employee was unable to obtain orders releasing him or her from service in the uniformed services before the expiration of the five-year period, and the inability was not the employee's fault.
- Service performed to fulfill periodic National Guard and Reserve training requirements and includes service performed to fulfill additional training requirements determined and certified by a proper military authority as necessary for the employee's professional development, or to complete skill training or retraining.
- Service performed in a uniformed service if he or she was ordered to or retained on active duty under the following circumstances:
  - Involuntary active duty by a military retiree;
  - Involuntary active duty in wartime;
  - Retention on active duty while in captive status;
  - Involuntary active duty during a national emergency;
  - Involuntary active duty for an operational mission, involuntary retention on active duty of a critical person during time of crisis or other specific conditions;
  - Involuntary active duty by Coast Guard Reserve member for natural or man-made disasters;
  - Service performed in a uniformed service if the employee was ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;
  - Service performed in a uniformed service if the employee was ordered to active duty in support of a critical mission or requirement of the uniformed services as determined by the Secretary concerned; and service performed as a member of the National Guard if the employee was called to respond to an invasion, danger of invasion, rebellion, danger of rebellion, insurrection, or the inability of the President with regular forces to execute the laws of the United States.

(25) WHAT IS THE EMPLOYEE'S STATUS WITH HIS OR HER CIVILIAN EMPLOYER WHILE PERFORMING MILITARY SERVICE?

The employee is deemed to be on furlough or leave of absence from the civilian employer while performing military duty. In this status, the employee is entitled to the non-seniority rights and benefits generally provided by the employer to other employees with similar seniority, status, and pay that are on furlough or leave of absence. Entitlement to these non-seniority rights and benefits is not dependent on how the employer characterizes the employee's status during a period of service.

12

ESGR EMPLOYER SUPPORT OF THE GUARD AND RESERVE

Exceptions to 5 year Limit

Section 4312 (c)

1. Service required beyond five years to complete an initial period of obligated service.

2. Service from which a person is unable to obtain a release within the five year limit through no fault of their own.

3. Required training for reservists and National Guard members.

4. Service under an involuntary order, to be retained on active duty during domestic emergency or national security related situations.

Exceptions to 5 year Limit

Section 4312 (c)…continued

5. Service on active duty because of a war or national emergency declared by the President of Congress.

6. Active duty by volunteers supporting “operational missions” for which Selected Reservists have been ordered to active duty without their consent.

7. Service by volunteers ordered to active duty in support of a “critical mission or requirement” in times other than war or national emergency and when no involuntary call up is in effect.

8. Federal service by member of the Guard called into action by the President to suppress an insurrection, repel, an invasion, or to execute the laws of the United States.

Reemployment Rights

Stipulations

- Occupied a civilian occupation.
- Employing agency notified in advance.
- Period of service not to exceed five years.
- Released under "honorable conditions."
- Report back or submit application for reemployment within the given restoration time limits.

Reemployment Rights

Time Requirements

- **Less than 31 days** must report back to work at the beginning of the next regularly scheduled work day.

- **More than 30 days but less than 181 days** must apply for reemployment no later than 14 days after completion of service.

- **More than 180 days** have 90 days after completion of service to apply for restoration.

Reemployment Rights

Loss of Restoration Opportunity

- Exceeding the 5-year cumulative limit.
- Section 4314(d) of 38 USC allows an agency to refuse technician reemployment if reemployment is impossible or unreasonable, such as:
  - The loss of, or inability to obtain military membership.
  - Expiration of indefinite or temporary appointment during period of military duty.
- Technicians with reemployment rights who fail to meet the military requirements of continued employment such as; compatibility, inability to obtain the required security clearance, etc.

Technician Protections

- Technicians are not subject to a reduction in force while serving in the uniformed services.
- If military service is more than 180 days, they technicians may not be separated, except for cause, for 1 year after returning to duty.
- If military service is more than 30 days, but less than 181 days, technicians may not be separated, except for cause, for 6 months.
- A technician is eligible to apply for vacant positions, which become available while performing military duty.

USERRA Submission

Procedures

- Pre-Deployment
  - Inform agency of deployment.
  - Submit a SF-52 accompanied by a copy of orders, and agency's USERRA checklist.
    - **SF-52 will not be needed for military services under 31 days***
  - Elect
    - Absent Uniformed Service or
    - Separation: SEP-US.

New Absent-US NOAC

- NOAC- 473 Absent Unformed Services
- Effective March 28, 2010 by the Office of Personnel Management

- Also commonly referred to as:
  - Military LWOP
  - LWOP- MIL
  - Military Furlough

What is Absent-US

- Employee is absent (whether in PAY or NONPAY status) to perform duty with the uniformed services and has reemployment rights under USERRA- 38 U.S.C. Chapter 43

USERRA Submission

Procedures…continued

- While on duty with the uniformed services, the agency carries the technician in A-US status unless the technician requests separation.
  - **A separation under these circumstances does not affect restoration rights.**

USERRA Submission

Procedures…continued

- Post Deployment
  - SF-52 accompanied by a copy of discharge orders, and USERRA (RTD) checklist
  - Reports back to duty with the specified restoration time lines

does not apply to military services under 31 days*

References

United States Department of Labor (DOL)

- http://www.dol.gov/elaws/vets/userra/userra.asp

Employer Support of the Guard and Reserve (ESGR)

- http://www.esgr.com/

Questions?

Most Frequently Asked Questions

- **Are indefinite employees covered under USERRA?**
  - YES, having the same rights as permanent employees.
- **When can or do I start my A-US?**
  - It will be effective the day of your military service or after and not before (remember to exhaust all comp time earned prior to the effective date of the A-US).
  - An SF 52 needs to be completed and forwarded through the proper chain of command to the HRO. You MUST notify HRO upon entering military service via the Absent Uniform Service 52 and upon the RTD of a technician!!

Some more Frequently Asked Questions

- **Can I cancel my FEHB?**
  - YES
    - Must happen within 60 days of entering active duty
    - Military Service must be more than 30 days
- **My time of service is more than 30 days, but I have enough leave to cover for that period of service (i.e. 40 days). Can I still cancel my FEHB as to avoid premium deductions?**
  - YES

Again, more Frequently Asked Questions…continued

- **If I cancel my FEHB, can I have it back upon my return to duty?**
  - YES, must elect to re-initiate FEHB within 60 days of RTD.
    - Upon renewing FEHB, you will have the same/previous FEHB coverage.
    - Upon renewing FEHB and you missed an open season, you have the option of changing your FEHB coverage.
- **Upon RTD from a contingency operation, when can I use my Presidential Leave?**
  - The day you return to duty as a technician. It must be used consecutively.

ABSENT UNIFORMED SERVICE

- Updated January 2011

Absent- Uniformed Services (AUS)

- Status upon entry into Active Duty (the 1st day of the start of the military order)
  - Placed in Absent- US

    OR
  - Separated from employment with USERRA rights (Separation-US)

Absent- US

- You may use the following paid Leave while in Absent- US (5 C.F.R. 353.208)
  - Accrued annual leave under 5 U.S.C. 6304
  - Military leave under 5 U.S.C. 6323
  - Compensatory Time for Travel 5 U.S.C. 5550b
  - Sick Leave under 5 U.S.C. 6307 (if appropriate under such service)

Absent- US

- Compensatory Time for Travel
  - Time Card Code- CB (when earned)
    - You may earn compensatory time for time spent traveling to and from TDY location.
    - Travel must be officially authorized, must be for work purposes, and must be approved by authorized agency official.
  - Time Card Code- CF (when used)

Absent- US

- See Handout
  - HRO Bulletin on Absent Unformed Service

Absent- US

- If paid leave is used while in Absent- US and
  - FEHB is retained, premiums deductions will still occur
  - FEGLI deductions will still occur
  - TSP and all other deductions will still occur
- **Technicians MUST keep copies of both civilian and military LES's in order to not be charged for the whole period of Absent- US upon RTD**
  - Any Paid Leave while on AUS will need to be "backed-out" of the calculations for military service deposits.

Absent- US

- RESERVIST DIFFERENTIAL (Public Law 111-8 dated 11 Mar 2009)
  - Non Reduction in pay while federal employee performing active service in the Uniformed Services or National Guard effective 3/15/09
    - Has USERRA rights under title 10
    - Pay differential between Civilian and Military compensation
    - Effective 1st pay period after 11 Mar 2009
    - Some Common Authorities Not Qualified for RD
      - 10 USC 10147
      - 10 USC 12301 (b)
      - 10 USC 12301 (d)

Absent- US

- Federal Employees HEALTH benefits (FEHB)
  - Employees must elect to terminate or continue FEHB coverage during the military service period.

Absent- US

- If FEHB is retained in a CONTINGENCY OPERATION
  - Premiums paid by agency for up to 24 months
  - To receive FEHB coverage at no cost, must be
    - ENROLLED
    - Reserve Component Member in a non-pay status
    - Called to duty in support of contingency operation (10 USC Section 101(a) (13))
    - On Absent-US or Separation- US
    - On active duty for more then 30 consecutive days

Absent- US

- If FEHB is terminated
  - Dates for termination are determined by the employees circumstance and election
  - Termination is not a break in continuity of coverage for the purpose of eligibility to continue coverage as an annuitant
    - Is not a cancellation
  - When coverage is terminated, employee has 31 day extension of coverage
  - Can Reinstate FEHB upon Return to Duty

Absent- US

- Federal Employees Group Life Insurance
  - Continues at no cost to the employee for up to 12 months in Absent-US status if in non-pay status
  - Options:
    - Terminate at the end of the 12 months of free coverage

      OR

    - Retain or Reduce Optional Coverage after the 12 months-
      - Premium Payments are required for both agency and employee shares

Absent- US

- NGAUS Insurance
  - Life insurance premiums may be paid directly to NGAUS
  - Disability coverage and premiums are suspended if on order more then 30 consecutive days of Absent- US
  - Contact NGAUS Insurance Trust for questions and requests for material

Absent- US

- Flexible Spending Account (FSA)
  - Options available such as the “Heart Act QRD”
- Federal Employees Dental/ Vision Insurance Program (FEDVIP)
  - Make Direct Payments
- Federal Long Term Care
  - Make direct payments or deducted from military pay

Absent- US

- Thrift Savings Account
  - TSP Fact Sheet on Effect of NonPay Status and Benefits that apply upon RTD and FAQs
  - Encourage Military TSP contributions
  - If you have a TSP Loan:
    - Fill out a TSP-41
    - This will suspend your loan payments until RTD
    - You may still make direct payments to TSP

Recommendations to Employees

- Keep all military and civilian LES's
- Participate in military TSP (enroll via MyPay)
- Review Designations of Beneficiaries
- Make arrangements for Garnishments and Allotments if entering into a non-pay status

NOA 292- Return to Duty

- From Absent- Uniformed Services
  - Effective the first day of duty following order end date, date of Request for Restoration, or Return to Duty while on Terminal Leave.
  - Exception: A technician cannot return to their Federal Tech Job while they are on PDMRA

Return to Duty (RTD)

- Must submit an SF 52 through your supervisor with effective date of return
- Supervisor must submit SF 52 to the HRO

FAILURE TO SUBMIT SF 52 PRIOR TO RETURN TO DUTY WILL CAUSE THE TECHNICIAN NOT TO BE PROCESSED FOR PAY. NEW NOAC WILL REJECT TIME CARD ACTION FOR REGULAR PAY IF NOT PROPERLY RETURNED TO DUTY!

RTD

- Under USERRA, employees who are on orders
  - 30 days or less, NLT the beginning of the first full regularly scheduled work period following end of order
  - 30-90 days, NLT 14 days from end of military order
  - 180 days or more NLT 90 days

RTD

- FEGLI
  - Less then 12 months= Premiums automatically restart
  - More then 12 months and terminated= Reinstate previous coverage
- FSA/LTC/ FEDVIP
  - Premiums reinstated automatically upon RTD
  - Employees have 60 days following RTD to make Qualifying Event/ Open Season elections
- NGAUS
  - Premiums reinstated

RTD

- FEHB
  - Retained while on Active Duty with agency paying premiums
  - Terminated Policy
    - Reinstate FEHB immediately upon RTD
    - OR
    - Waive reinstatement to use transitional TRICARE
      - DOD TEMP provides up to 180 days of health care benefits upon separation from Active Duty (BAL 05-402)

RTD

- FEHB Qualifying Life Event
  - If you are not enrolled in FEHB, RTD permits enrollment
  - If enrollment is immediately reinstated, permits change in enrollment plan
  - When Transitional Tricare Expires, loss of TRICARE permits enrollment change or new enrollment within 60 days

RTD

- FEHB 5 yr requirement for retirement
  - Considered to have continuous coverage if:
    - Terminated enrollment is reinstated immediately uon reemployment OR
    - Immediate reinstatement was waived, at employee's request, to use Transitional TRICARE and reinstated prior to retirement

RTD

- TSP
  - Loan payments reinstated automatically with TSP 41
  - Make up missed contributions
  - Automatic 1% contributions for all FERS employees
  - Matching 4%-Can get if paid into Military TSP (must have all military LES's as proof of TSP payment)

RTD

- Leave
  - 5 Days of Presidential Leave
    - To be used immediately upon RTD, code “LV”
    - Contingency over 42 continuous days or more
    - May be used if RTD while in terminal leave status
      - OPM Memo CPM 2003-14 and CPM 2008-12
  - Post Deployment/ Mobilization Respite Absence (PDMRA)
    - Military administrative absence returning after 19 Jan 07
    - Federal, State, or Local Government civilian employees cannot use leave or be present for and receive their civilian pay and PDMRA
    - Constitutes Dual Compensation

RTD

- Leave
  - ANG Downtime (Reconstitution Leave) is not considered terminal leave; therefore, you cannot Return to Duty while in ANG Downtime Status

RTD

- Military Deposits
  - Due to new NOAC 473, the technician must show civilian LES's to determine pay and non-pay status. Calculation for deposit will be determined using your non-pay time when no money was put into the retirement account

Questions?